

IN THE ELKHART CIRCUIT COURT
CAUSE NO. 20C01 '02 08 PL 4 9 8

[illegible]

FILED

AUG 12 2002

CLERK ELKHART CIRCUIT COURT

Defendants.

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, civil penalties, costs, and other relief.

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).

2. The Defendant, Brian Anderson, (“Anderson”), at all times relevant to this complaint was a resident of and conducted business via the Internet in Elkhart County, Indiana.

3. The Defendant, Jon Paul Schell, (“Schell”), at all times relevant to this complaint was a resident of and conducted business via the Internet in Elkhart County, Indiana.

FACTS

4. At least since January 17, 2002, Defendants have offered items for sale via Internet auctions.

5. On or about January 17, 2002, Defendants entered into a contract via e-Bay, an Internet auction website, with Trent Finlinson ("Finlinson") of Layton, Utah, wherein Defendants agreed to sell sixteen sticks of 256 MB PC2100 DDR RAM computer memory ("memory") for Nine Hundred Twenty Dollars (\$920.00).

6. On January 17, 2002, Finlinson paid the Defendants Nine Hundred Twenty Dollars (\$920.00) through PayPal, an internet-based money transfer service.

7. The Defendants represented that they would deliver the memory within a reasonable period of time.

8. The Defendants have yet to either deliver the memory, or issue a full refund to Finlinson.

COUNT I-VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

9. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 8 above.

10. The transaction referred to in paragraphs 5, is a "consumer transaction" as defined by Ind. Code § 24-5-0.5-2(a)(1).

11. Defendants are "suppliers" as defined by Ind. Code §24-5-0.5-2(a)(3).

12. Defendants' representation to Finlinson that the memory would be supplied in a greater quantity than the supplier intends or reasonably expects, when Defendants knew or reasonably should have known that he did not possess such, as referenced in paragraph 5 is a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(4).

13. Defendants' representation to Finlinson that the Defendants would be able to deliver the memory to Finlinson within a reasonable period of time, when Defendants knew or reasonably should have known that they would not, as referenced in paragraph 7, is a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(10).

14. Defendants' representation to Finlinson that he would be able to ultimately purchase the memory as offered by Defendants and referenced in paragraph 5, when Defendants did not intend to sell or deliver the memory, is a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(11).

**COUNT II- KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT**

15. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-14 above.

16. The misrepresentations and deceptive acts set forth in paragraphs 5 and 7 were committed by Defendants with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendants, Brian Anderson and Jon Paul Schell, for a permanent injunction pursuant to Ind. Code §24-5-0.5-4(c)(1), enjoining Defendants from the following:

- a. engaging in the sale of items via the Internet;
- b. representing expressly or by implication that the subject of a consumer transaction will be supplied to the public in greater quantity than the supplier intends or reasonably expects, when the Defendants know or reasonably should know that it will not;

c. representing expressly or by implication that the Defendants are able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendants know or reasonably should know that they can not;

d. representing expressly or by implication that a consumer will be able to purchase the subject of a consumer transaction as advertised by Defendants, if the Defendants do not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendants for the following relief:

a. cancellation of Defendants' unlawful contracts with consumers, including but not limited to the persons identified in paragraph 5, pursuant to Ind. Code §24-5-0.5-4(d);

b. consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers for the purchase of Defendants' items via the Internet, including but not limited to, the person identified in paragraph 5 in an amount to be determined at trial.

c. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action.

d. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana.

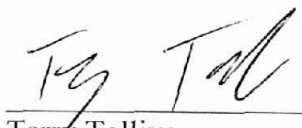
e. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. all other just and proper relief.

Respectfully submitted,

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By:



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